

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No.20489 of 2012 (O&M)
Date of decision: 17.03.2015**

State of Punjab and others

... Petitioners

Vs.

Kamaljit Sharma and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest?

Present:- Mr. L.S.Virk, Addl.A.G.Punjab
for the petitioners.

Mr. Vikas Chatrath, Advocate
for respondent No.1.

AMIT RAWAL J.

This order shall dispose of two writ petitions Nos.20489 and 20509 of 2012. Since question of law and facts are same in both the petitions, except date of appointment of one of the petitioners is different, the same are being decided by a single order.

For adjudication of the dispute between the parties to the lis, the facts are being taken from CWP No.20489 of 2012, which has been filed by the State of Punjab through Secretary to Government of Punjab, Transport Department, Civil Secretariat, Chandigarh and others, for quashing of the impugned Award dated of even date

23.12.2012, (in both cases), whereby, the workman has been ordered to be taken back in service with full back wages with continuity of service and all consequential benefits of service.

The facts, which are culled out from the pleadings, indicate that respondents-workmen were appointed as Helper w.e.f. 01.01.1980 and 27.02.1987 on daily wages and their services were stated to have been terminated on 28.02.1983 and 06.01.1988, but, however, again they were taken back into service with continuity of service and full back wages and again on 31.03.1999, notice for retrenchment was issued and retrenchment compensation was stated to have been sent on 10.05.1999. According to the respondents-workmen, since the retrenchment of the workman was not in accordance with the provisions of Section 25 F(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the I.D.Act), the workman raised reference and in pursuance to the same, the matter was referred to the Industrial Tribunal, Jalandhar.

It is a matter of record that the respondent-workman in CWP No.20489 of 2012 had earlier also approached this Court by filing a writ petition bearing No.16321 of 2003, which was dismissed vide order dated 17.10.2003, by giving liberty to him to seek the remedy available under the I.D. Act, 1947.

The workmen-respondents in their separate claim statement submitted that retrenchment w.e.f. 31.3.1999 was not in consonance with the provisions of Section 25 F(b) of the I.D.Act as

one month's salary in lieu of retrenchment order and the period of notice had not been paid, much less, provisions of Sub Section b of Section 25F of the Act have not been complied with.

The Management filed separate written statement to the claim of the workmen by raising numerous objections, including maintainability and submitted that the case, of the respondents-workmen was submitted before the Committee for regularization of the services, on consideration by the Committee, it was found that workmen did not fulfill the required qualification, i.e., Matric and I.T.I Diploma in respective trades and on account of that fact, the Committee did not consider their case for regularization and ordered that the workmen be retrenched under the provisions of Section 25-F of the I.D.Act. It has been further averred that the retrenchment compensation was paid to the workmen. The Management examined Gurdeep Singh-MW1, who tendered his affidavit Ex.MW/1A, which is produced and proved on record as Ex.M1 to Ex.M55, whereas on the contrary, the workman tendered his affidavit Ex.WW1/A, who proved Ex.W1 notice for retrenchment. The witness of Management admitted that retrenchment compensation was not simultaneously paid to the workman on 31.3.1999 and the same was paid by demand draft of ₹ 8205/- on 3.5.1999, vide covering letter, a copy of which has been exhibited as Ex.M2, which was sent at the home address of workmen. The factum of joining of the workman on 3.1.1980 was also admitted.

For the sake of brevity, the cross-examination of the Management witness is extracted herein below:-

"I am the dealing Clerk for the workman. I am giving my evidence on behalf of the respondent. It is correct that I have not been authorised by the respondent to give evidence on this behalf volunteer since I am the dealing Clerk and as such I am competent to give evidence on behalf of the Mgt. It is correct that earlier on 28.2.1983 the services of the workman were terminated. It is also correct that the workman was reinstated with continuity of service and without back wages. I have no knowledge if against the above award management filed an appeal before the Hon'ble High Court and the same was dismissed on 1.5.97. It is correct that after reinstatement the workman was taken on duty on 20.11.97. It is correct that the workman requested the management for regularization of the services. It is correct that the committee directed the General Manager to retrenched the services of the management and accordingly a notice Ex.W1 was issued to the workman mentioning there is that he will be retrenched on 31.3.99. It is correct that retrenchment compensation were not simultaneously paid to the workman on 31.3.99 and the same was paid by the demand draft on 3.5.99 and covering letter of the same is

Ex.M2. And this amount was to the extent of Rs.8205/- and the same was sent to the workman at this home address. It is correct that at the time of his retrenchment the workman were drawing a total wage of Rs.1641/- per month. It is also correct that the workman joined duty as daily wager on 1.1.80 again said according to our record the workman joined on 1.1.81 as daily wager. It is correct that I have not brought the record of the above but only noting of the office wherein in which the date of joining has been written as 1.1.81. It is wrong that the amount of retrenchment comes to Rs.15589/-. It is wrong to suggest that no sanction of the competent authority for the retrenchment of workman was received. In fact, I have no knowledge about this fact. It is correct that workman neither charge sheeted nor any enquiry held against him. It is incorrect to suggest that when the services of the workman were many daily wages junior to him were working. It is correct that at the time of retrenchment of the workman Sh. Paramjit Kumar, Harmesh, Dilbahadur and Pardeep were serving with the respondent and subsequently their services were regularized. Volunteer it it was done as per the order of Hon'ble High Court. It is correct that the workman was not holding the requisite qualification for the post of helper and secondly there was

no other vacancy against which his services could be regularized. Since the workman was neither matriculate and ITI trade as such he was not having the requisite qualification. It is not within my knowledge that the Hon'ble High Court have already decided that the above qualifications were not required for the post of helper. I have no knowledge about the pleadings of the case of the workman as I am not a law graduate. I have given testimony on the basis of record available in the office. I have no knowledge about the decision of the High Court in Civil Misc. Application was allowed by the Hon'ble High Court or not. I have no knowledge if CWP No.16321 of 2003 was dismissed with liberty to seek its remedy under ID Act order dated 17.10.03. I have also no knowledge if the copy of the SOC or not. It is wrong to suggest that I have no knowledge of this case and I have disposed falsely in support of the management."

The Industrial Tribunal, on the basis of the evidence, came to a categoric finding that the services of the workmen were void, ab initio, nonest and therefore, while setting aside the impugned order of retrenchment of workman held that the workman continues to be in service and is entitled to full back wages with continuity of service and all consequential benefits of service.

It is the aforementioned Awards of even date which has

been challenged by the State of Punjab in CWP Nos.20509 and 20489 of 2012.

The workman-respondent in CWP No.20509 of 2012 was employed on 27.02.1987 as Helper on daily wages and his services were also retrenched vide order dated 31.3.1999 and even alleged compensation was also sent on the same date, i.e., 3.5.1999 and respondent in CWP No.20509 of 2012 was employed, however, their services vide termination of service dated i.e. 31.3.1991.

Mr. L.S.Virk, Additional Advocate General, Punjab appearing on behalf of the petitioners, in support of his submissions submitted that the Industrial Tribunal, while granting relief of reinstatement of the workman, has not noticed that the workman did not have the requisite qualification of Matric with ITI Diploma. Since the matter was referred to the Committee for the purpose of regularization, the Committee found that the workmen did not have the requisite qualification and accordingly, recommended their retrenchment and therefore, the services of the workmen were retrenched by serving the retrenchment notice. Though there is a delay in serving the amount of compensation as envisaged under Section 25F of the I.D.Act but that delay should not be fatal and thus, the Industrial Tribunal was justified in law to order retrenchment along with back wages.

Mr. Vikas Chatrath, learned counsel appearing on behalf of respondents No.1-workmen, in both the cases, contended that the

requisite qualification for the post of Helper was not essential qualification/requirement and attention of this Court was drawn to the order dated 25.2.2002 (Annexure R-1/3) passed in CWP No.3387 of 2009 titled as Pardeep Kumar vs. State of Punjab and others, whereby, in identical situation and in respect of the Transport Department, Punjab, Division Bench of this Court, has held, that Government instructions cannot override the statutory rules. He further drawn attention of this Court to the order dated 27.07.2011 (Annexure R-1/4) rendered in CWP No.7614 of 2010 to contend that once the petitioner had been appointed in the year 1983, as he fulfills all the conditions of 1977 Rules from by accepting Experience Certificate, it does not lie in the mouth of petitioners to rely on instructions 1982 and retrench the services of the workmen, after they have served from 1983 till 1999 , i.e., for almost 16 years.

Mr. Vikas Chartarth, learned counsel in support of his aforementioned arguments has relied upon the following judgments of Hon'ble the Supreme Court:-

- 1. *Jasmer Singh vs. State of Haryana and another in Civil Appeal No.346 of 2015 decided on 13.01.2015.***
- 2. *Anoop Sharma vs. Executive Engineer Public Health Division No.1, Panipat (Haryana) 2010(3) S.C.T.319.***
- 3. *Bhuvnesh Kumar Dwivedi vs. Hindalco***

Industries Ltd. 2014 (6) JT 190.

Mr. L.S.Virk, Additional Advocate General, Punjab, in rebuttal has submitted that in view of the Full Bench judgment of this Court in **Municipal Council, Dina Nagar, Tehsil & District Gurdaspur vs. Presiding Officer, Labour Court, Gurdaspur and another** 2014(4) S.C.T.514, the ratio descendi culled out is not applicable as the workmen are only entitled to the compensation.

I have heard learned counsel for the parties and appraised the paper book as well as law the case law cited with the able assistance of the learned counsel for the parties and am of the view the present writ petitions are liable to be dismissed.

Hon'ble the Supreme Court in Jasmer Singh's case (supra) while pondering upon the provisions of law, qua, termination of the services of the workman, who had rendered 240 days in a calendar year, culled out the ratio descendi, by holding that in case the services of the workman have been found to be in violation of the provisions of Section 25F of the Act, consequential benefits, i.e., awarding of the back wages would necessarily follow, in other words, employee/workman would be entitled to claim full back wages as the onus to prove, that the workman was gainfully employed, has been held to be heavily on employer.

In the instant case, on going through the cross-examination of MW1, irresistible conclusion is drawn that provisions of Section 25 (F) of the Act have not been complied with, as the

amount of compensation is stated to have been sent on 3.5.1999 whereas, services of the workman were retrenched on 31.3.1999. Language of the Statue is clear and un-ambiguous. The compensation has to be accompanied with the order of retrenchment.

The Hon'ble Supreme Court, had also an occasion to ponder the vagaries suffered by the workman whose services have been retrenched, for instance, the nutrition of the wards of the workman, education etc. The Court in Bhuvnesh Kumar Dwivedi's case (supra), while noticing the various judgments on the interpretation of provisions of Section 25 (F) of the Act also held that where the Labour Court has termed the retrenchment of the workman ab initio, void, illegal, nullity or nonest, the fact remains that once the workman has not been given one month notice or pay in lieu thereof and compensation in terms of Section 25F(a) and (b) of the Act would have the effect of rendering the action of the employer as nullity and the employees are entitled to continue in employment as if his services were not terminated. Thus, a consideration of the matter in controversy, this Court finds that the services of the workmen were retrenched in complete violation of provisions of Section 25F of the I.D.Act. Award of the Labour Court is upheld, thus, the workmen in both cases are entitled to reinstate into service with continuity of service.

As far as payment for back wages is concerned, Hon'ble

the Supreme Court also observed that burden to prove, that workman was gainfully employed, post termination, also heavily relied upon the employer. In the instant case, employer has failed to lead any evidence in this regard and therefore, the findings rendered by the Industrial Tribunal that the workman are entitled to continue to be in service with full back wages and consequential benefits of service is in accordance with the provisions of law.

No question of law sought to be raised in the present writ petitions arise for determination of this Court, so as to bring the matter under the realm of Judicial review, accordingly, the writ petitions are dismissed and the orders of the Industrial Tribunal are upheld.

(AMIT RAWAL)
JUDGE

March 17, 2015

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